

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHELLE ROBERSON,

Plaintiff,

v.

KAISER FOUNDATION
HOSPITALS, et al.,

Defendants.

NO. C04-1043 TEH

ORDER GRANTING JAYNELLE
BELL'S MOTION TO WITHDRAW
AS COUNSEL FOR PLAINTIFF
AND ORDER OF REFERRAL TO
CALIFORNIA STATE BAR AND
THE COURT'S STANDING
COMMITTEE ON PROFESSIONAL
CONDUCT FOR DISCIPLINARY
PROCEEDINGS

On February 9, 2005, this Court denied Jaynelle Bell's first motion to withdraw as counsel for Plaintiff Michelle Roberson. The Court provisionally granted Ms. Bell's second and third motions to withdraw on August 15, 2005, but ultimately denied the motions after a hearing on September 12, 2005.¹ On October 18, 2005, Ms. Bell filed a fourth motion to withdraw, and the Court heard from both Ms. Bell and her client, Ms. Roberson, during a November 28, 2005 motion hearing.

After carefully reviewing Ms. Bell's moving papers and the record in this case, including representations made to the Court by Ms. Bell and Ms. Roberson, it is abundantly clear that denying Ms. Bell's request to withdraw as counsel for Ms. Roberson would be an extreme disservice to Ms. Roberson. While the Court makes no determination on the strength of Ms. Roberson's claims, or on whether Ms. Roberson has been a cooperative and truthful client, the disagreement and animosity between Ms. Bell and her client have risen to

¹Ms. Bell incorrectly labeled the re-noticing of her second motion to withdraw as a third motion.

1 the level of irreconcilable difference. Ms. Bell has made clear that she will take no further
2 action in this case if she remains as counsel of record for Ms. Roberson, and the case would
3 therefore be subject to dismissal for failure to prosecute. Thus, Ms. Bell's mental state
4 renders her unable or unwilling to fulfill her duties as Ms. Roberson's attorney, and
5 Ms. Bell's continued employment as Ms. Roberson's counsel would result in violations of
6 the rules of professional responsibility. Ms. Bell's withdrawal is therefore appropriate under
7 California Rule of Professional Conduct 3-700, which governs termination of an attorney's
8 employment. Accordingly, the Court GRANTS Ms. Bell's motion to withdraw.

9 However, even though the Court is granting Ms. Bell's motion, the July 28, 2005
10 order to show cause against Ms. Bell for failing to comply with the rules of this Court
11 remains under submission. Additionally, the Court continues to have serious concerns about
12 Ms. Bell's capacity to continue the practice of law, as well as her ability to comply with all
13 rules of procedure and professional conduct that, as an attorney, she is bound to follow.
14 Among other transgressions in this case – which, more than 21 months after its filing, has not
15 advanced past the pleadings stage – Ms. Bell has:

- 16 1. Failed to comply with this Court's electronic case filing ("ECF") procedures on
17 numerous occasions;
- 18 2. Failed to comply with Clerk's notices and Court orders regarding failure to
19 follow ECF procedures;
- 20 3. Failed to appear at the September 20, 2004 motion hearing;
- 21 4. Arrived late to the November 22, 2004 case management conference;
- 22 5. Failed to meet and confer with opposing counsel to file joint case management
23 conference statements;
- 24 6. Failed to file a declaration or memorandum of points and authorities in support of
25 her first motion to withdraw, and repeatedly insisted that she did file these
26 documents;
- 27 7. Failed to file a timely opposition to Defendant's first motion to set aside the
28 default of Defendant Melody James;

1 8. Submitted a second motion to withdraw with an ex parte request to shorten time,
2 without establishing good cause for her request to shorten time; and

3 9. Failed to comply with the Court's July 8, 2005 order to re-notice her second
4 motion to withdraw and to serve a copy of the order and re-notice of motion on
5 her client.

6 Beyond these violations of Court orders and rules, Ms. Bell has also lied to the Court
7 and to a state agency and has violated professional rules of conduct. First, at the October 4,
8 2004 case management conference, Ms. Bell represented to the Court that her fiancé was
9 deceased. In fact, Ms. Bell's fiancé at the time was still alive, as brought to the Court's
10 attention by counsel for Defendants at the November 22, 2004 case management conference.
11 Ms. Bell confirmed at that case management conference that her current fiancé was, indeed,
12 alive, but she explained that her former fiancé, Jon Hall, had died. The Court ordered
13 Ms. Bell to file a copy of Mr. Hall's death certificate, along with a declaration explaining her
14 relationship with him. In that declaration, executed on November 30, 2004, but not e-filed
15 with the Court until December 10, 2004, Ms. Bell declared under penalty of perjury that she
16 lied to the county recorder's office to obtain a copy of Mr. Hall's death certificate. Decl. of
17 Jaynelle Bell in Opp'n to OSC Re: Sanctions ¶ 7 (docket #58).

18 Second, on July 28, 2005, the Court ordered Ms. Bell to appear for a hearing on
19 August 15, 2005, at 10:00 AM. Ms. Bell failed to appear, which was especially egregious
20 because the hearing was for an order to show cause as to why sanctions should not be
21 imposed for Ms. Bell's failure to comply with prior orders of the Court. When the Court's
22 courtroom deputy telephoned Ms. Bell's office at 10:05 AM on August 15, Ms. Bell
23 answered the telephone and stated that she did not have the hearing on her calendar. The
24 Court continued the hearing until 11:30 AM to allow Ms. Bell time to travel to this Court,
25 and the Court subsequently sanctioned Ms. Bell \$352.50, payable to opposing counsel, to
26 cover opposing counsel's fees for waiting for Ms. Bell late arrival.

27 Third, in a letter dated November 4, 2005, and provided to the Court by Ms. Roberson
28 at the November 28, 2005 hearing, Ms. Bell notified counsel for Defendants that she would

1 not be attending Ms. Roberson's deposition. Thus, Ms. Bell violated her responsibilities to
 2 her client by refusing to represent Ms. Roberson without waiting for this Court to rule on her
 3 motion to withdraw as counsel.

4 Most recently, in papers filed with her final motion to withdraw, Ms. Bell flouted both
 5 the rules of professional responsibility and the authority of this Court. For instance, Ms. Bell
 6 wrote in her declaration supporting her motion that her client left a phone number at which
 7 she could be reached each morning at 7:30 AM, but that counsel has made no attempt to
 8 reach her client at that time. Decl. of Jaynelle Bell in Supp. of Mot. to Withdraw as Counsel
 9 ¶ 7 (docket #155). She also stated in her declaration that, "whether the court grants this
 10 motion or not, Counsel intends to have no further involvement in this case beyond the date of
 11 this hearing, or to spend another dime of her money on Plaintiff's behalf even if that results
 12 in Counsel committing malpractice or incurring further contempt charges." *Id.* ¶ 9. Ms. Bell
 13 continued by stating that, "while this Court can have another 'fact finding' hearing if it likes,
 14 Counsel will not abide by any order that requires her to continue representing a person whose
 15 lack of integrity and whose knowingly false, self-serving statements, just to keep Counsel in
 16 this case, have caused Counsel to doubt the entire veracity of her claims." *Id.* Along similar
 17 lines, Ms. Bell wrote in the memorandum of points and authorities accompanying her motion
 18 to withdraw that:

19 Counsel will not continue to represent a client who she despises
 20 nor advance a cause or pay costs of a cause that she no longer
 21 believes is meritorious. Counsel is no longer asking permission
 22 to withdraw; she is withdrawing, a violation of the Rules of
 23 Professional Responsibility. Counsel is no longer caring if
 24 Plaintiff's rights are protected, a violation of the Rules of
 25 Professional Responsibility, thus, she must withdraw. Counsel is
 26 concerned solely with herself, her ability to pay *her* bills and in
 27 maintaining her mental well-being thus, Counsel must
 28 mandatorily withdraw. Counsel cannot, in good faith, continue to
 advance Plaintiff's cause. Thus, Counsel must mandatorily
 withdraw or commit malpractice when she walks away from
 Plaintiff's case, permission or none. Thus, there is no benefit to
 anyone to keeping Counsel in this matter one day longer.
 Counsel is giving notice to the world that she will violate any
 court order that requires her to continue to represent Plaintiff
 under these conditions.

1 Mem. of P. & A. in Supp. of Mot. to Withdraw at 4 (docket #156). As evidenced by the
2 above, Ms. Bell has clearly stated that she cares nothing about this Court's orders or the
3 California Rules of Professional Conduct.

4 Although Ms. Bell first attempted to remove herself from this case by arguing that she
5 is abandoning the practice of law to become a real estate agent, Ms. Bell has also steadfastly
6 refused to resign from the State Bar. Instead, she has repeatedly maintained that she wishes
7 to retain her active bar membership because she believes it may benefit her real estate
8 practice. However, Ms. Bell's actions in this case, and particularly her most recent filings,
9 make clear that she is unwilling to comply with the rules that govern the practice of law.
10 Accordingly, and in light of all of the above, the Court finds good cause to refer Ms. Bell to
11 the State Bar of California for disciplinary investigation, and the Court will therefore submit
12 a copy of this order, along with a discipline referral form, to the State Bar. The Court
13 anticipates that the individuals who review Ms. Bell's referral for discipline will have access
14 to the electronic docket in this case, but the Court will attach copies of the following
15 documents to its referral for ease of reference:

- 16 1. Declaration of Jaynelle Bell in Opposition to OSC Re: Sanctions (filed in paper
17 form as docket #50; erroneously re-filed electronically as docket #58);²
- 18 2. Declaration of Lawrence Kimsey in Opposition to OSC Re: Sanctions (filed in
19 paper form as docket #52; erroneously re-filed electronically as docket #59);
- 20 3. Declaration of Bobby Richardson in Opposition to OSC Re: Sanctions (filed in
21 paper form as docket #51; erroneously re-filed electronically as docket #60);
- 22 4. January 5, 2005 Scheduling Order Re: Plaintiff's Counsel's Motion to
23 Withdraw and Defendant's Motion to Set Aside Default (docket #70);

24
25
26 ²In cases designated for electronic filing, it is the Clerk's practice to accept for filing
27 documents that are submitted improperly in paper form. When such documents are filed, the
28 Clerk issues a notice instructing the filing party to e-mail the documents to the Court and
specifically instructing the party not to e-file any document that has been previously filed.
Despite these instructions, Ms. Bell nonetheless e-filed several documents that had already
been filed.

5. February 9, 2005 Order Denying Jaynelle Bell's Motion to Withdraw as Counsel for Plaintiff (docket #77);
6. July 8, 2005 Order Denying Ex Parte Application for Order Shortening Time on Plaintiff's Counsel's Motion to Withdraw (docket #112);
7. July 28, 2005 Second Order to Show Cause Re: Jaynelle Bell (docket #114);
8. August 15, 2005 Order Imposing Sanctions on Jaynelle Bell (docket #124);
9. Declaration of Jaynelle Bell in Support of Motion to Withdraw as Counsel (docket #155); and
10. Memorandum of Points and Authorities in Support of Bell & Associates' Fourth Motion to Withdraw as Counsel (docket #156).

The Court will also attach to its referral copies of the letter from Ms. Bell dated November 4, 2005, and handed to the Court by Ms. Roberson at November 28, 2005 hearing, and a copy of the fee agreement sent to the Court by Ms. Roberson following the November 28 hearing. Neither of these documents has been filed in the docket, but the Court has cited the November 4 letter in this order, and it provides a copy of the fee agreement in case the State Bar would like to examine whether Ms. Bell has breached that agreement in addition to violating the rules that govern attorney conduct.

In making its referral to the State Bar, the Court is uncertain whether Ms. Bell's misconduct results from incompetence or lack of ethics or whether Ms. Bell suffers from mental health issues that impact her ability to function as a lawyer. For example, in declarations filed by Ms. Bell in opposition to the Court's first order to show cause as to why sanctions should not be imposed, Ms. Bell's former office manager and the administrative assistant at her realty office both expressed concern over Ms. Bell's mental state. Kimsey Decl. ¶ 11 (docket#59); Richardson Decl. ¶¶ 5-6 (docket #60). Whatever the cause of Ms. Bell's transgressions, however, the Court strongly believes that it is inappropriate for Ms. Bell to continue to be permitted to practice law in this state.

Additionally, the Court refers this matter to the Court's Standing Committee on Professional Conduct to determine whether Ms. Bell should be barred from practicing in this


1 district even if the State Bar does not revoke Ms. Bell's license to practice law in California.
2 *See* Civ. L.R. 11-6(c) (providing for the Court's appointment of a standing committee to
3 serve as "Special Masters for Disciplinary Proceedings pending before the Court"). The
4 Court shall attach to its referral to the Standing Committee the same attachments listed
5 above.

6 Finally, IT IS FURTHER ORDERED that Ms. Roberson shall be given until
7 **March 31, 2006**, to file a notice of appearance of new counsel or a notice that she intends to
8 prosecute this case pro se – i.e., on her own and without an attorney. If neither notice is filed
9 within this time frame, this Court will have no alternative but to conclude that Ms. Roberson
10 no longer wishes to pursue the claims raised in the amended complaint, and the Court will
11 therefore dismiss the amended complaint with prejudice.³ As this Court previously advised
12 Ms. Roberson, dismissal with prejudice means that Ms. Roberson will not be able to recover
13 on any of the claims raised in the amended complaint filed in this case, even if she were to
14 find a new attorney willing to take her case at a later date.

15 To ensure that Ms. Roberson receives notice of this order, the Clerk shall serve a copy
16 of this order on Ms. Roberson at her last known address, as reported by Ms. Bell:
17 4529 Pronghorn Way, Antioch, CA 94509. While the Court would ordinarily require
18 Ms. Bell to provide notice to Ms. Roberson as a condition of her withdrawal, the Court has
19 no confidence that Ms. Bell would actually comply with an order to do so.

20
21 **IT IS SO ORDERED.**

22
23 Dated: 02/10/06

24 

THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT

25
26
27
28 ³Of course, Ms. Roberson would remain free to pursue, in a separate proceeding, any malpractice claims she may have against Ms. Bell.